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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,983	12/27/2001	Joseph Michael Lewis	71042	1103

38550 7590 09/27/2005

CARGILL, INCORPORATED
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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/034,983	Applicant(s) LEWIS ET AL.	
	Examiner James Keenan	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48, 50-53 and 55 is/are pending in the application.
- 4a) Of the above claim(s) 9-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 45-48, 50-53 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/2/05</u> | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/2/05 has been entered.

2. Claims 9-44 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 45-48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al (US 5,046,912, previously cited) in view of Linton et al (US 4,992,281) and "Utilizing the Growing Local Supply of Distillers Grains", by Robert Kaiser (hereinafter Kaiser), both cited by applicant.

Bostrom et al show a method of supplying bulk material, including loading the material into a rail container, transporting the container, and inverting the container to

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remove the material therefrom. Bostrom et al discloses that the material may be grain, and that the container may be a rail car with a cover that can be removed or opened prior to unloading. Bostrom et al do not explicitly state that the material is moist grain by-products having a moisture content of 30-70 percent by weight.

Linton et al show an animal feed supplement comprising a mixture of grain by-products having a moisture content of 50-65 percent by weight, which is disclosed as being readily transportable.

Kaiser teaches on page 4, last paragraph, that although wet grain by-products typically having a moisture content of 60-70 percent are more difficult and expensive to handle than dry grain by-products, such wet by-products have improved handling characteristics when the dry matter percentage is increased by further drying (and therefore the moisture content is decreased) such that the moisture content is 50-60 percent.

It therefore would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Bostrom et al by utilizing grain by-products having a moisture content between 30 and 70 percent, as jointly suggested by Linton et al and Kaiser, as this would simply be the utilization of a particular type of bulk material which is known to have improved handling characteristics, and thus at least "a ... quantity" thereof, as broadly claimed, would be able to be loaded into, transported by, and removed from railroad cars. While applicant may argue that railroad cars were thought to be unsuitable for moist grain by-products prior to applicant's invention because a full load of heavy wet grain would settle in the cars after a long journey and be difficult to

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remove, it is noted that the claims require neither any particular amount of material to be loaded into or removed from the cars nor any particular transporting time or distance.

Re claim 45, Bostrom shows in figure 5 that the car is rotated through about 160 degrees, as noted in column 20, lines 28-39.

Re claims 46-48 and 50, the particular type of grain by-products utilized and the particular number of cars in the train is considered an obvious design expediency based on availability, marketing, time of year, etc.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Linton et al and Kaiser, as applied to claims 1-2 above, and further in view of Wymer et al (US 4,823,708, previously cited).

Wymer et al show that it is well known to utilize a flexible cover or tarp to cover an open-topped railcar containing grain, and in light of this, it would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the process of Bostrom et al by including this feature, as it would simply be an art recognized design expediency which would neither require undue experimentation nor produce unexpected results.

6. Claims 4-7, 51-53, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Linton et al and Kaiser, as applied to claims 1-2 above, and further in view of Auld et al (US 1,496,196, previously cited).

Bostrom et al show a below-grade pit 25 for receiving the dumped material, but do not disclose a material moving device for further transport of the material.

Auld et al show a method of transporting bulk materials including a railcar inverting device D which dumps the material to a below-grade conveyor 5 for subsequent transfer to loading terminal 30 where it is loaded onto a transportation vehicle for further distribution.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the process of Bostrom et al by utilizing a conveyor in the pit for moving the material to a transportation vehicle for further distribution, as shown by Auld et al, as this would enhance the usefulness and flexibility of the system.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Linton et al, Kaiser, and Auld et al, as applied to claim 6 above, and further in view of Wymer et al and Lydic (US 6,244,191, previously cited).

As noted above re claim 3, Bostrom et al does not show a flexible tarp, and it would have been an obvious design expediency to have included this feature in view of Wymer et al. Bostrom et al, even as so modified, also does not show the railcar to be made of aluminum.

Lydic shows a railroad hopper car for grain and other bulk materials the body of which is made of aluminum.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have yet further modified the process of Bostrom et al by providing at least

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the body of the railcar with aluminum, as shown by Lydic, as this would provide well known advantages such as corrosion resistance and lighter weight.

8. Applicant's arguments with respect to claims 1-8, 45-48, 50-53, and 55 have been considered but are moot in view of the new ground(s) of rejection. It is noted that applicant's argument on page 15, first paragraph of the unentered after-final amendment filed 8/29/05 referring to col. 5, lines 59-64 of Bostrom et al that some moist materials may have poor flow characteristics and require special handling techniques is actually a teaching in favor of the examiner's position because Bostrom goes on to say that a feature of the invention is that the angle of dump can be adjusted to suit the flow characteristics of such products. Thus, even though Bostrom acknowledges that moist products are more difficult to handle, he explicitly teaches that his invention is suited to handle them.

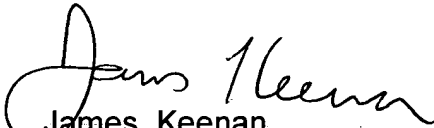
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eillen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James Keenan
Primary Examiner
Art Unit 3652

jwk
9/22/05